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Supreme Court of the United States

No. 591

TERM A. D. 1944

IN THE MATTER

of

ASSOCIATED GAS AND ELECTRIC COMPANY,

Debtor,

In Proceedings for the Reorganization of a Corporation Pursuant to Chapter X of the Bankruptcy Act.

THATCHER C. JONES, FREDERICK T. SUTTON and RUSSELL M. VAN KIRK, constituting the Scrip Holders Protective Committee of ASSOCIATED GAS AND ELECTRIC COMPANY,

Petitioners and Appellants Below,

against

STANLEY CLARKE, Trustee of ASSOCIATED GAS AND ELECTRIC COMPANY, Debtor, et al.,

Respondents and Appellees Below.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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This brief is submitted in reply to the respondents' brief in opposition to the petition for a writ of certiorari in the above matter.

At page 4 of the respondents' brief, it is contended that it is not clear whom petitioners represent, and that the petitioners are not creditors of the estate.

The petitioners herein are the Jones Committee. The Jones Committee represents all holders of Associated Gas and Electric Company scrip. The Jones Committee has appeared and actively participated in all Court proceedings involving the Ageco scrip. It represents approximately $1,500,000 principal amount of Ageco scrip. No objection has ever been raised either in the District Court or in the Court below as to the status or standing of the Jones Committee in these proceedings. Throughout the litigation before the Special Master, the Jones Committee was the only representative of the scripholders. It represents, among others, the individual claim of T. W. Phillips Gas & Oil Company whose proof of claim is included in the Record on Appeal (19-30). The Jones Committee filed with the Securities & Exchange Commission the statements required by the Public Utility Holding Company Act, and the regulations thereunder.

Formal intervention by a Protective Committee is not required under the present Bankruptcy Act.

In re *Philadelphia and Reading Coal and Iron Co.*, 105 F. 2d 358, 3rd Circuit, the Circuit Court of Appeals said:

> "The fact nevertheless remains that the Congress has provided that all creditors and stockholders and their attorneys, agents and committees on their behalf have the right to be heard on all questions and to be compensated for services rendered in a reorganization proceeding. The latter right which is given by Sections 242 and 243 of Chapter X, 11 U. S. C. A. Sec. 643, is not conditioned upon formal intervention."

It has been repeatedly held that the right to appear and be heard includes the right to appeal (In re *Day & Meyer, Murray & Young, Inc.*, 2nd Circuit, 93 F. 2d 657; In re *Barclay Park Corporation*, 2nd Circuit, 90 F. 2d, 595). In addition, the respondents overlook the following paragraph in the scripholders proof of claim filed in this proceeding

by the T. W. Phillips Gas & Oil Company as the owner of $112,300 of Ageco scrip.

> "Deponent is advised and believes that the claims herein made are equally applicable to all holders of Scrip certificates of the Debtor, and deponent respectfully requests that the claims hereby made, if sustained, inure to the benefit of all holders of Scrip of the Debtor, whether or not similar claims have been filed by them herein" (28-29).

Petitioners have a direct interest in this case and are the sole representatives of the scripholders in asserting their claims. The above contention of the respondents was not raised either in the District Court or in the Court below. It may not be raised for the first time in this Court.

At page 5 of respondents' brief they contend that it does not appear in this record that the petitioners represent a single person who exchanged his CDCs upon Ageco's exercise of its option. Here again the respondent overlooks the proof of claim of T. W. Phillips Gas & Oil Co. which recites as follows:

> "Said Scrip certificates were issued purportedly in payment of interest upon Convertible Obligations due February 15, 2002, of the Debtor, which said Convertible Obligations were issued by the Debtor in purported exchange for Convertible Debenture Certificates of the Debtor pursuant to a purported conversion of Convertible Debenture Certificates into shares of preferred stock of the Debtor" (22).

Dated, New York, November 15, 1944.

Respectfully submitted,

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